

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
CenturyLink Petition for Limited Stay)	
)	

REPLY COMMENTS OF HD TANDEM

HD Tandem hereby submits these comments on the Petition for Limited Stay of the Transformation Order Years 6 and 7 ICC Transition filed by CenturyLink on April 11, 2017.¹ For the reasons outlined below, HD Tandem urges the Federal Communications Commission ("FCC" or "Commission") to grant a stay of the effective dates of Sections 51.907(g)(2) and 51.907(h), as they apply to tandem switching and transport charges.

I. Introduction

HD Tandem is a nationwide intermediate provider with an emphasis on direct connectivity between originating carriers and terminating carriers. These services are provided on a commercial agreement basis utilizing next generation technologies and CODECs. To date, contracted carrier partners of HD Tandem receive approximately two-thirds of their terminating traffic through HD Tandem. HD Tandem has no end users and files no tariffs. As an intermediate provider, HD Tandem receives payment from the calling party carrier and sends the originated traffic to the receiving party at no cost to the terminating carrier.

II. The Commission Should Grant the Requested Stay

HD Tandem supports CenturyLink's petition for stay of Years 6 and 7 as it is unclear as to how the rules will be applied. As CenturyLink notes, since the adoption of the *Transformation Order*,² "significant debate has arisen within the industry about what subset of tandem switching and transport rates are subject to the Years 6 and 7 transition to bill and keep."³ HD Tandem agrees with

¹ Petition for Limited Stay of Transformation Order Years 6 and 7 ICC Transition - As it Impacts a Subset of Tandem Switching and Transport Charges, WC Docket No. 10-90, *et al.* (filed Apr. 11, 2017) ("Petition").

² *Connect America Fund, et. al.*, 26 FCC Rcd. 17663 (2011) ("*Transformation Order*") (subsequent history omitted), *aff'd sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

³ Petition at 5.

CenturyLink that if a stay of this portion of the intercarrier compensation reform adopted in the Commission's 2011 *Transformation Order* is not granted, it is almost certain that the industry will be plagued by protracted and costly billing disputes, ongoing legal challenges, and inevitable market inefficiencies.⁴ HD Tandem also agrees that a failure to grant a stay will result in "irreversible competitive harm in Years 6/7 and beyond and arbitrage schemes that have already been launched in anticipation of this transition will only expand."⁵

Furthermore, as the Commission's "informal guidance" indicates, only certain intermediate providers are subject to the transition to bill and keep in Years 6 and 7 while other carrier relationships are not. Specifically, it seems that price cap carriers who connect to their affiliated CMRS carriers are not subject to the rate transition. According to the FCC, "as applicable to call flows where the tandem is owned by a price cap carrier and the end office is owned by an affiliated CMRS carrier or CLEC, the rates are considered Terminating Tandem to Third Party service (and do not transition to bill and keep)."⁶ Such disparate treatment of certain intermediate carriers creates regulatory confusion and places certain classifications of carriers at a competitive and economic disadvantage.⁷ As such, HD Tandem agrees that "[a]n approach where the transition to bill and keep applies to tandem services in some contexts but the identical service is not subject to the transition in other contexts leads to obvious market inefficiencies and disincentivizes investment."⁸ The better approach is for all intermediate carriers to be treated equally.

Rather than creating a hybrid regulatory framework that puts carriers at economic disadvantages based on affiliation, the Commission should strive for "a competitive market where all providers can compete under the same rules with a minimum of arbitrage and administrative inefficiency."⁹ Such a regulatory framework should provide for a level playing field that allows "all

⁴ See Petition at 3. See also Petition at 9 noting that "given the complexities and potential for confusion, there are likely to be a high number of billing disputes - leading to a further drain on industry and FCC resources alike."

⁵ Petition at 2.

⁶ Petition at 6.

⁷ See Petition at 10 noting that such an approach "will create the perverse result whereby the majority of traffic terminated to CMRS providers, will continue to be subject to tandem access charges while other traffic flows will not."

⁸ Petition at 8. CenturyLink also notes "[t]hese same competitive harms will follow where the transition to zero applies to tandem services provided when the tandem owner and the end office owner are affiliated and are one type of carrier, but not when they are affiliated and another type of carrier." *Id.*

⁹ Petition at 3.

tandem owners to be compensated as opposed to picking certain call flows over others to receive continued ICC recovery."¹⁰

HD Tandem also agrees that "a grant of this request will also best facilitate the Commission's broader intercarrier compensation (ICC) reform effort and as part of that, the IP transition."¹¹ This petition highlights the need for the Commission to address ambiguous intercarrier compensation issues in a "broader, more holistic fashion" so that all intermediate carriers are treated equally.¹² Rather than issuing informal guidance to a select group of unnamed industry members, the Commission should invite all potentially affected parties to participate in discussions, and as HD Tandem has noted in the past, to the extent further regulatory actions are necessary, the Commission should call for all parties to refresh the record in the pending *Transformation Order* Further Notice of Proposed Rulemaking.

Respectfully submitted,

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¹⁰ Petition at 13.

¹¹ Petition at 3.

¹² Reply Comments of HD Tandem, WC Docket No. 16-363, *et al.* (filed Dec. 19, 2016) at 2.